IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6291 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KODINAR TALUKA CO OPERATIVE BANKING UNION LTD. & 1 - Petitioner(s)
Versus
RAJNIKANT AMRUTLAL JANI & 2 - Respondent(s)

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Appearance :
MS AVANI S MEHTA for Petitioner(s) : 1 - 2.
MR HARIN P RAVAL for Respondent(s) : 1, 1.2.1,1.2.2 - 3.
DS AFF.NOT FILED (R) for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 25/07/2006

ORAL JUDGMENT

1. The petitioners have challenged an order dated 27th February, 2004 passed by the Gujarat Co-operative

Tribunal in so far as the same is against the petitioners as also an order dated 26th May, 2004 passed by the Tribunal in a Review Application filed by the respondents.

2. The petitioner no.1-bank claims an amount of Rs.8,01,200/- from the respondents. Respondent no.1 is a partnership firm, respondent no.1/A/B are the partners of the firm and respondent nos. 2 and 3 are the guarantors. Since the amount as claimed by the bank was not paid, bank instituted a summary suit before the Board of Nominees against the respondents being summary suit no.31/01. In the said summary proceedings the Board of Nominees passed an order dated 25/2/2002 by which the suit came to be decreed ex-parte. The partnership firm and its partners requested for recalling the ex-parte order passed by the Board of Nominees. This was allowed by an order dated 18/6/2002.

3. The bank was aggrieved by the said order dated 18/6/2002. The bank, therefore, preferred an appeal before the Co-operative Tribunal being Appeal No.569/02. The partnership firm, the partners and the guarantors also preferred an appeal being Appeal No. 717/02. By common order the Co-operative Tribunal on 27/2/2004 was pleased to partly uphold the appeal no. 717/02. The appellant Amarsingh Boghabhai Solanki was permitted to defend the summary suit unconditionally. The other defendants, therefore, sought review of this order which was

allowed by the Tribunal by order dated 26/5/2004 and provided that unconditional leave to defend will be available to all defendants.

4. The petitioners have, therefore, filed the present petition.

5. It can be seen that earlier the lavad proceedings were decided ex-parte. All the defendants, therefore, deserve an opportunity to defend themselves before the Lavad Court. Considering the money claims the same cannot be unconditional. Having heard learned advocates appearing for the parties in this regard, I find that all the defendants should be given an opportunity to defend the suit on the condition that the partnership and the two partners would deposit 10% of the suit amount (i.e. in all 30%) before the bank. The guarantors between themselves should also deposit additional 10% with the bank. The same shall be done within a period of two months from today. If the respondents herein fulfill the said condition, the Board of Nominees shall hear the suit permitting the respondents to defend themselves. This may be done expeditiously and preferably within a period of four months from the date of such deposits by the respondents. Needless to say that the deposits will be subject to the final outcome of the suit. In case any of the respondents fails to abide by the condition, the Lavad Court will be free to proceed further in absence of the defence of such

respondents.

6. With these directions, the petition is disposed of. Orders passed by the Tribunal and the Board of Nominees stand modified to the above extent. Rule is made absolute to the above extent. No costs.

(Akil Kureshi, J.)

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